

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4219 OF 2006.

Popatlal Dipchand Odhekar. ... Applicant.

Versus.

The Senior Inspector of Police,
Panchawadi Police Station, Nashik
and another. ... Respondents.

Shri R.D.Soni i/by M/s.Ram & Co. for the Applicant.

Shri A.S.Shitole, A.P.P. for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 22nd December, 2006.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. This is an application for anticipatory bail. The offence registered is under sections 406, 408, 409, 420 read with section 34 of the Indian Penal Code. The offence was registered on the basis of the report of the Government Auditor who audited the accounts of the Nashik Cooperative Credit and Capital Ltd., Dindori Road, Nashik. The present Applicant was working as Manager with the said Bank. The offence has been allegedly committed by the Directors, employees, staff members and borrowers of the said Bank. The extent of misappropriation and fraud alleged is Rs.3,62,45,924/-. The allegation is that the accused acting in conspiracy have released large loans without complying with the requirements of law. The loans were released in favour of the Directors and their relatives.

2. So far as the present Applicant is concerned, it is alleged that during his tenure, there was illegality in releasing loan in favour of seven parties. The allegation is that in breach of provisions of the bye-laws, the Applicant acting in conspiracy with the other accused have released large amounts by way of loan. As stated earlier, the allegation is as regards seven loan transactions. The report submitted by the Assistant Commissioner of Police (Crimes), Nashik is taken on record. The report fairly discloses that the Applicant himself is not a borrower. The allegation is that large amounts are due and payable by the borrowers to whom loans were released during the tenure of the Applicant as Manager.

3. Reliance is placed on various orders passed by this court (coram: S.C.Dharmadhikari J.) in application for anticipatory bail filed by the Directors. The learned A.P.P. placed reliance on the order passed in Criminal Application No.4221 of 2006 on 11th December 2006 in Bail Application filed by another Manager.

4. The learned Counsel for the Applicant submitted that from 1998 onwards the Applicant is not concerned with the said society. The Directors who are responsible for sanction of the loan are granted protection by this Court and therefore, there is no reason why the protection should be denied to the

Applicant. The learned A.P.P. stated that according to the record, the Applicant was in the employment till 30th June 2000 and his role is very clear in releasing the loan in favour of seven concerns. The borrowers have not repaid the loan. He submitted that the Application No.4221 of 2006 by another Manager is not entertained by this Court.

5. I have considered the submissions. Even according to the case of the prosecution from the year 2000, the Applicant is not in the employment of the said society. It is not at all the case of the prosecution that the Applicant is possessing any record pertaining to the transactions in which he is allegedly involved. The record is already taken over by the Investigating Officer.

6. All the documents pertaining to the sanction of loan in favour of the said seven concerns are available for investigation. It is not the case of the Investigating Officer that till today the Applicant has not cooperated. The offence registered is based on the report of the auditor. The reliance placed by the learned A.P.P. on order passed in Criminal Application No.4221 of 2006 will not help the prosecution as the said application was withdrawn.

7. Looking to the nature of the allegations made

against the Applicant as reflected from the report which is placed on record, this is not a case where custodial interrogation of the Applicant is required. The Directors of the Society are admittedly granted pre-arrest bail by this Court. The Board of Directors are responsible for the sanction of loan. Therefore, the Applicant is entitled to pre-arrest bail. However, pre-arrest bail will have to be granted subject to conditions.

8. Hence the following order is passed:

- i) In the event of the arrest of the Applicant in connection with C.R.No.271 of 2006 registered with Panchavati Police Station, (now transferred to EOW, Crime Branch, Nashik), the Applicant shall be enlarged on bail in the sum of Rs.30,000/- with one or two sureties in the like amount.
- ii) The bail is granted subject to condition that the Applicant to forthwith surrender his passport, if any, to the Investigating Officer.
- iii) The bail is granted subject to condition that the Applicant not leave Nashik city without prior permission of the trial Court.

- iv) The bail is granted subject to further condition that the Applicant will attend the office of the E.O.W., Crime Branch, Nashik, as and when called upon to do so by the concerned Officer and will cooperate with the investigation.
- v) The bail is granted subject to further condition that the Applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.
- vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.
- vii) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.
- viii) The Application is disposed of in the above terms.

Judge.